

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JUAN OSCAR FUENTES,

Petitioner,

v.

Civ. No. 08-562 JH/RLP

ANTHONY ROMERO, Warden, *et al.*,

Respondents.

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION¹

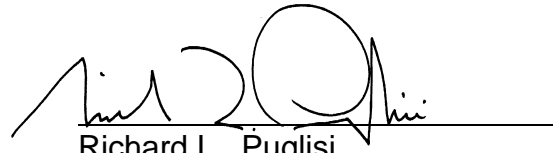
1. This is a proceeding brought pursuant to 28 U.S.C. § 2254. Petitioner is the custody of Respondent Romero pursuant to the Judgment, Partially, Suspended Sentence and Commitment filed in the Second Judicial District, Bernalillo County, New Mexico in *State v. Fuentes*, CR. 06-04346, Answer [Doc. 9], Exhibit A thereto.

2. Respondents point out to the Court that Petitioner has a direct appeal of his conviction pending before the New Mexico Court of Appeals. See *Id.* & Exhibit K. Petitioner still has state court remedies available to him, see Rule 5-802 N.M.R.A. Accordingly, Petitioner's claims have not been exhausted as required by § 2254(b)(1)(A). See *O'Sullivan v. Boerckel*, 526 U.S. 838, 842 (1999). This case does not involve delay in Petitioner's appeal process. *Harris v. Champion*, 938 F.2d 1062, 1069 (10th Cir. 1991).

¹ Within ten (10) days after a party is served with a copy of the Magistrate Judge's Report and Recommendation (R&R) that party may, pursuant to 28 U.S.C. § 636(b)(1), file written objections to the R&R in the United States District Court. A party must file any objections within the ten-day period allowed if that party wants to have appellate review of the R&R. If no objections are filed, no appellate review will be allowed.

RECOMMENDED DISPOSITION

I recommend that the case be dismissed without prejudice.



Richard L. Puglisi
United States Magistrate Judge